

AO 241 (Rev. 09/17)

**PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

United States District Court		District: Eastern	
Name (under which you were convicted):		Docket or Case No.:	
<u>John Farrell</u>			
Place of Confinement:		Prisoner No.:	
<u>S.C.I.-Albion</u>		<u>NF-4871</u>	
Petitioner (include the name under which you were convicted)		Respondent (authorized person having custody of petitioner)	
<u>John Farrell</u>		<u>v. Supt. Oliveria</u>	
The Attorney General of the State of:			

PETITION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:
Common Pleas Court Phila. County

- (b) Criminal docket or case number (if you know): CP-51-CR-0004372-2014; 0004375-2014; 0004378-2014
2. (a) Date of the judgment of conviction (if you know): October 17th 2017
 (b) Date of sentencing: Jan. 4th 2018
3. Length of sentence: 16-48 yrs.
4. In this case, were you convicted on more than one count or of more than one crime? ☒ Yes ☐ No
5. Identify all crimes of which you were convicted and sentenced in this case: Aggravated Assault
two 5-15 yrs; 6-18 yrs for Aggravated Assault; 5-10 yrs
Conspiracy; 2½-5 yrs PLC

6. (a) What was your plea? (Check one)

<input checked="" type="checkbox"/> (1) Not guilty	<input type="checkbox"/> (3) Nolo contendere (no contest)
<input type="checkbox"/> (2) Guilty	<input type="checkbox"/> (4) Insanity plea

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(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? _____

(c) If you went to trial, what kind of trial did you have? (Check one)

☒ Jury ☐ Judge only

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

☒ Yes ☐ No

8. Did you appeal from the judgment of conviction?

☒ Yes ☐ No

9. If you did appeal, answer the following:

(a) Name of court: Court of Common Pleas Phila. County

(b) Docket or case number (if you know): CP-51-CR-0004372; 0004375; 0004378-2014

(c) Result: Affirmed

(d) Date of result (if you know): Jan. 16th 2018

(e) Citation to the case (if you know): _____

(f) Grounds raised: The sentencing Court abused its discretion by imposing an effective sentence 14 yrs longer than his cohorts, his rehab needs, sentencing guidelines and mitigating factors were not considered in violation of procedural due process

(g) Did you seek further review by a higher state court? ☒ Yes ☐ No

If yes, answer the following:

(1) Name of court: Superior Court

(2) Docket or case number (if you know): 590 EDA 2018

(3) Result: Affirmed on

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(4) Date of result (if you know): Sept. 22nd 2020

(5) Citation to the case (if you know): _____

(6) Grounds raised: The sentencing Court abused its discretion by imposing an effective sentence 14 yrs longer than similarly situated co-defendants. Also, rehab needs, sentencing guidelines, and mitigation were not considered

(h) Did you file a petition for certiorari in the United States Supreme Court? ☐ Yes ☒ No

If yes, answer the following:

(1) Docket or case number (if you know): _____

(2) Result: _____

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court? ☐ Yes ☒ No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☐ No

(7) Result: _____

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(8) Date of result (if you know): _____

(b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☐ No

(7) Result: _____

(8) Date of result (if you know): _____

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

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(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☐ No

(7) Result: _____

(8) Date of result (if you know): _____

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: ☐ Yes ☐ No(2) Second petition: ☐ Yes ☐ No(3) Third petition: ☐ Yes ☐ No

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: The sentencing judge violated due process for failing to
sentence the Petitioner in accord with his procedural due process rights

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The sentencing court imposed a disparaging sentence which is longer than his
similarly situated co-defendant. The Court did not consider any of the
mitigating factors. E.g., the Petitioner lack of criminal record; the
protection of the public, the gravity of the offense as it relates to the
impact of life of the victim and community, and the rehabilitative needs

(b) If you did not exhaust your state remedies on Ground One, explain why: _____

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(c) **Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☒ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes ☒ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition? ☐ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☐ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

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(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: _____

GROUND TWO: Direct Appeal Counsel was constitutionally ineffective
for failing to raise the trial judge erroneous instructions on conspiracy

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The trial court instruction was inconsistent with the facts and inapposite
of the standard jury instruction on conspiracy

(b) If you did not exhaust your state remedies on Ground Two, explain why: The appeal counsel filed
the claim in his 1925(B) statement but failed to raise it in the brief

(c) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction; did you raise this issue? ☐ Yes ☒ No

(2) If you did not raise this issue in your direct appeal, explain why: Because the appeal lawyer
failed to include this merit base claim in his brief

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Post Conviction Relief Act

Name and location of the court where the motion or petition was filed: Common Pleas Court

Phila. County

Docket or case number (if you know): CP-51-CR-0004372-2014; 0004375; 0004378-2014

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Date of the court's decision: Pending because pcra was recently filed

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☐ No(4) Did you appeal from the denial of your motion or petition? ☐ Yes ☐ No(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☐ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two : _____

GROUND THREE: Petitioner constitutional right under the 6th and 14th Amendment were violated when trial counsel failed to request a direct verdict or acquittal of agg. assault

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

While there was evidence of an aggravated assault on J. Gallasso and T. Bayer there wasn't any evidence showing Petitioner committed an aggravated assault on Joseph Gallasso. Petitioner was entitled to a request for a direct verdict; or a judgment of acquittal on the assault of Joseph. Both Counsel was ineffective for failing to challenge this assault charge.

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(b) If you did not exhaust your state remedies on Ground Three, explain why: Because I have a pcra
pending, which this issue is raised in it

(c) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☒ No

(2) If you did not raise this issue in your direct appeal, explain why: Because ineffective
claims are not permitted on direct appeal; only during
pcra's

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: PCRA

Name and location of the court where the motion or petition was filed: Common Pleas Phila.
County

Docket or case number (if you know): CP-51-CR-0004372-2014; 0004375-2014; 0004278-2014

Date of the court's decision: none yet, still pending

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion or petition?

☐ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition?

☐ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

☐ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

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(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three:

GROUND FOUR:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) If you did not exhaust your state remedies on Ground Four, explain why:

(c) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why:

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

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Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition? ☐ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☐ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: _____

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13. Please answer these additional questions about the petition you are filing:

- (a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? ☐ Yes ☒ No

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not

presenting them: Ground 2 & 3 were not presented because
they are being raised in a state post conviction under
counsel's ineffectiveness

- (b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

Ground two was not presented during the direct appeal process
because counsel failed to brief the issue after he raised it,
in a 1925(B) matters for appeal

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? ☐ Yes ☒ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available.

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? ☒ Yes ☐ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

Court of Common Pleas Phila. County; No. CP-51-CR-0004372-2014
0004375-2014; 0004378-2014. P.C.R.A. Trial and Appellant counsels
ineffective failing to challenge the agg. assault during post-trial
and direct appeal. Also a supplement will be filed to raise erroneous
instruction under counsel's ineffectiveness

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16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Bill Hopsin

(b) At arraignment and plea: Bill Hopsin

(c) At trial: Joel Krantz Public Defendant Office

(d) At sentencing: Joel Krantz same

(e) On appeal: Mark D. Copoulos, Esquire. 1628 John F. Kennedy Blvd., Suite 2120, Phila., PA. 19103

(f) In any post-conviction proceeding: Teri B. Himebaugh, Esq. 1400 Spring Garden St. #911 Phila., PA. 19130

(g) On appeal from any ruling against you in a post-conviction proceeding: _____

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? ☐ Yes ☐ No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? ☐ Yes ☐ No

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.*

(1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of -

- (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
- (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
- (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

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- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.


Therefore, petitioner asks that the Court grant the following relief: New trial, or resentencing

or any other relief to which petitioner may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on 2/1/2022 (month, date, year).

Executed (signed) on 1/31/22 (date).



Signature of Petitioner

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition.

Smart communications/PA DOC
SCI Albion
John Farrell NF4871
PO Box 33028
St. Petersburg, FL 33733

Inmate Mail
PA Dept of
Corrections



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